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Deregulation as socio-spatial transformation

Dimensions and consequences of shifting governmentalities in the Danish construction industry

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Deregulation as socio-spatial transformation: Dimensions and consequences of shifting governmentalities in the Danish construction industry

Abstract

The paper analyses main dimensions and consequences of deregulation in the Danish construction industry. Previous research has often conceptualized deregulation in terms of either the dismantling of states' regulatory capacity or the layering of initiatives upon existing structures. Using Foucault's concept of governmentality, we contribute further to this discussion by conceptualizing the process of deregulation as a socio-spatial transformation. This is a complex process of transformative change involving the opening and reconfiguration of institutional spaces. Drawing on an analysis of historical and current developments and changing modes of construction governance in Denmark, we show how the construction sector in the 1940-1960s was rendered governable by disciplinary power in order to achieve national modernization. We then illustrate how the developments since the early 1990s have been moulded in an advanced liberal governmentality, with a focus on deregulation and the establishment of free markets. On the basis, we discuss the consequences of a shift in governmentalities, suggesting that new deliberative spaces in the form of mediating and interstitial institutions are likely to be in demand for in order to transgress the bounds of neoliberalism and ensure commitment for alternative development agendas.

Keywords

Construction industry, deregulation, governmentality, neoliberalism, regulation, transformational change

Introduction

The recent decades have seen a decentralization and devolution wave, which has led to profound changes in the governance of most sectors with critical implications for the coherence and functioning of important societal areas. New Public Management (NPM) reforms has led to a fragmentation of local and regional governance systems (Green and Orton, 2012), a spread of methods and values of the market to guide policy creation and management in the public sector (Eikenberry and Kluver, 2004), and an outsourcing of public sector activities to private firms or non-profit organizations (Dovemark *et al.*, 2018). Djelic (2006) argues that this situation implies a transformed perspective on the role of states and to regulation. Important aspects in this respect are the delegation of authority from state to independent regulatory agencies, and that regulatory areas increasingly rely on quasi- and self-regulation (Rimmer, 2006) based on the voluntary interaction and negotiation of different private sector actors (Djelic, 2006; Fung, 2006).

As the scope and type of regulations have widened, and regulation in guise of 'hard' legislation no longer has primacy in the development of regulatory areas, so have the perceived need for creating greater coordination to ensure policy coherence in government (Christensen and Lægreid, 2001). The process of orchestrating change and coordinating activities between constellations of actors and organizations at multiple levels is, however, no easy task, but presents significant societal and political challenges (Cowell, 2017). Previous research has studied such dynamics from different perspectives. Some authors have taken a normative stance (Dingwerth and Pattberg, 2006) to the issue. Fung (2015) has e.g. suggested that one way to overcome barriers to coordinating action is to create organizational networks that span the relevant organizations in order to more effectively address the problem at hand. Carolini *et al.* (2018) have proposed partnerships as means of reorganizing knowledge production and learning across scales. Others have focused on the longitudinal processes and complex socio-technical interplays that eventually translate into change (Rotmans and Kemp, 2008; Gibbs and O'Neill, 2014). Finally, yet other authors have provided critical accounts that problematize or challenge the dominant political rationalities that underpin the politics and practices of transformative change (Ng, 2011; Alene, 2018).

While different in their scope and focus, common among these contributions is the recognition of the limits of traditional forms of top-down government attributed to the growing fragmentation associated with the 'new managerialism'. According to Springer (2012) neoliberalism is, however, neither a top-down nor bottom-up phenomena, but a process of socio-spatial transformation. Hawkesworth and Imrie (2009) argue that deregulation is not simply to be seen as a dismantling of the state's regulatory capacity. Rather, the changing socio-technical relations and processes is a part of an opening up of new organizational spaces involving the emergence of new capacities, competencies and interactions of regulation. Likewise, MacKenzie and Lucio (2005) argue that the act of regulatory change requires shifts and realignments across a range of sites, spaces and actors, and consequently suggest that any discussion of regulatory change should be sensitive to the manner in which the regulation was originally constructed and developed. The reason for this is that many accounts of regulatory change has failed to locate the discussion in terms of any broader social context. This has led to conceptualizations of regulation in zero-sum terms, as a question of regulation versus

deregulation, which disregards the “multiplicity of regulatory sites, spaces and actors whose relationships define the pattern and efficacy of regulation” (MacKenzie and Lucio, 2005: 500). Kettl (2000) substantiates this by proposing that the recent transformation of governance has strained the traditional roles of all players, as new challenges layer on top of the traditional institutions and their processes, which in turn strain the capacity of governments to deliver high-quality public services. A key element in understanding contemporary conditions for regulation is therefore not to focus on the withdrawal of states from the regulatory process or their capacity for developing well-designed rules and legislation, but to relocate the problem of the state in the problematic of governing (Popkewitz, 1996).

Taking the Danish construction sector as a case, the purpose of this paper is to discuss main dimensions of the deregulation of construction policies and practices, and the challenges and opportunities hereof for the coordination of activities and actors in the process. We begin in the next section by outlining Foucault’s concept of governmentality. We discuss its relevance in an analysis of the consequences of deregulation due to its focus on the very conditions of existence (Foucault, 2006) that gives rise to change, and the means through which effective forms of governance are developed in the intersection between competing discourses, strategies, practices and constellations of actors (Raco, 2003). We then present the empirical material (cf. Gottlieb and Jensen, 2016) drawn on in the subsequent analysis of two distinct historical, yet intertwined periods of construction regulation and practices in Denmark. On this basis, we conclude the paper by discussing the consequences of a shift in governmentalities. In doing so, we contribute to conversations about deregulation by adding new empirical insights to this growing body of scholarship, and by challenging current conceptualizations of deregulation and its consequences.

Governmentality

Gouvernementalité or governmentality is a concept formulated by Foucault in the fourth lecture of his 1978-course on 'Security, Territory, Population' (Foucault, 2007). In this lecture, Foucault sets out to discuss the so-called problem of government. Government, in Foucault's reading, denotes something more than the present day interpretation where it belongs to politics and the state. Rather, government in the sense of 'to govern' covers a wide semantic domain referring to a process of exchange between individuals in the form of the control one may exercise over others. In this context, governmentality can be seen as a strategic field of power relations, within which the types of conduct that characterize 'government' are established (Senellart, 2007).

We suggest that the governmentality perspective can provide new and interesting insights into the discussion on deregulation and its consequences through its focus on the issue of the problematics of government (Lemke, 2002). With governmentality, Foucault (2007) referred to three things: (i) a specific historical era; (ii) a result of a process of ‘governmentalization’ of the state; and (iii) an ensemble of institutions, procedures, etc. that allow the exercise of a specific type of power that has the population as its target.

These different definitions entail different insights. First, governmentality is a genealogical project, where we are obliged to locate concepts in a socio-historical space and reflect on the historical and social conditions that rendered a certain historical knowledge of society true

(Lemke, 2002). This enables us to be sensitive to the manner in which the regulation was originally constructed and developed. Second, even though governmentality is preoccupied with the problem of government, it does not privilege the state or assume an essentialist, trans-historical and universal understanding of the state and state power (Jessop, 2007). New policies, practices and institutions layer on top of and redefine existing relations. This means that we analytically can pay attention to the complex reconfiguration of regulatory roles, forms and relationships (Cunningham and James, 2017) involved in the regulatory process. Third, with the focus on governmentality, Foucault attempted to develop a new way of understanding government and politics, which focused neither exclusively on the microphysics of power or on the macrophysics of power, but on the dialectic relationship between these two spheres. Foucault thus analysed the connections between the constitution of the subject and the formation of the state (Lemke, 2002) by focusing on the interactions between instruments, institutions, technologies and practices, i.e. social technologies (Raffnsøe *et al.*, 2016) used on different levels of society to govern the conduct of individuals. This also entails a focus on the strategies that are used to govern at a distance, including varieties of regulation, which go under the label of self-regulation, that are associated with the deregulation or decentring of regulation (Black, 2001).

Thus, following McKee (2009), the governmentality perspective offers critical insights for policy research. It identifies both a territory (i.e. a social space) and means of intervention in its attempt to understand how political rationalities are constructed as objective knowledge while drawing attention to the ways in which institutions of the state are transformed at the same time as individual subjectivity is moulded (Paterson and Stripple, 2010).

Methodology

In the article, we focus on the main dimensions and consequences of deregulation in the Danish construction sector by comparing changing modes of governance in two historical periods. The research presented is the result of a qualitative study drawing on interpretive and reflexive historical sociology (Szakolczai, 2003). Document analysis was the primary method used to shed light on the historical developments and problematizations in the making. The document analysis drew on primary as well as secondary sources that are contemporaneous with the events being studied. We adopted archival research methods (Manoff, 2004), which are particularly relevant in a historical study of this character. The approach gave access to examining how and why particular individuals and organizations acted as they did. The archival data included policy reports, scientific reports, regulations, newspaper articles, contributions to debates and legislative work, etc. on construction governance and development initiatives from 1940 to present day. The archival data was selected to provide a nuanced description of the different perspectives on the regulatory decisions and specific policies and instruments. This included documents expressing support and criticism of regulation in order to avoid bias and a one-sided focus on the political elite. Thus, when reading bills and legislative proposals we were careful to obtain viewpoints expressed in written minority opinions as well. In addition, newspaper articles provided a source of information on contrasting views on the official politics. Two remarks of a methodological nature have to be made in relation to the selection of the empirical material and the analytical process.

First, even though each part of the analysis deals with one distinct period (1940-60s and 1990s-present), we do not treat these as time spans in a traditional historiographic sense. The very foundation of Foucault's archaeological project is its emphasis on the discontinuity and transformation of structures. The notion of discontinuity is paradoxical, as it is both an instrument and an object of research. It makes it possible to individualize different domains but at the same time, it can be only established by comparing those domains (Foucault, 2006). Thus, on the one hand, the two parts of the analysis should be seen as temporal brackets (Langley *et al.*, 2013) used to structure the narrative. The brackets are constructed as "progressions of events and activities separated by identifiable discontinuities in the temporal flow" (Langley *et al.*, 2013: 7). On the other hand, the two periods are also an object of study. A discontinuity exists in the sense we can observe a difference between two discursive formations (Foucault, 2006). To this end, we drew on principles from discourse analysis as an analytical strategy. We followed Marttila's (2013) approach and focused on the structure of government according to the core concepts in the analytical framework based on Dean's (2010) understanding of governmentality that focusses on regimes of practices. Table 1 presents an analytical framework for the study of governmentality.

Table 1. Analytical framework and key questions in a governmentality analysis (based on Oels, 2005; Dean, 2010; Jensen *et al.*, 2017)

Analytical category	Description of analytical category	Key questions in analyzing governmentalities
Fields of visibility	Ways in which a social field is perceived and materialized	<ul style="list-style-type: none"> • How is the construction sector conceptualized as an object of governance? • What dimensions are foregrounded or obscured?
Technical aspects	The specific techniques, procedures and instruments used to produce and organize knowledge about the field, and accomplish rule	<ul style="list-style-type: none"> • Which instruments are employed in regulating the field of construction? • What devices and techniques are employed in the production of knowledge on construction?
Forms of knowledge	The problematization underlying a given regulatory	<ul style="list-style-type: none"> • What forms of knowledge and argumentation emerge

	concern, which informs the activity of governing	<p>and underpin governance interventions?</p> <ul style="list-style-type: none"> • What types of means-end relations are promoted in a specific conceptualization of construction?
Formation of identities	The forms of self or appropriate behavior, which are presupposed by the governance rationality	<ul style="list-style-type: none"> • What interventions are considered appropriate? • What norms and values are embedded in the understanding of appropriate governance?

The framework was used as a source of theoretical sensitivity (Marttila, 2013) to give meaning to data and understand the different governmentalities at play. We coded the data qualitatively, focussing on explicating the connectivity among the analytical categories. The coding resulted in the identification of two articulations of two governmentalities that form the basis of the analysis. The start year of two periods coincides with two important construction political milestones. In 1940, the government established the Ministry of Internal Affairs' Construction Committee who proposed a series of principal solutions to deal with the labour and housing shortage that affected the developments in the sector throughout the 1940-50s. In 1990, a report on the resource consumption and distribution in building sparked a debate and a series of initiatives, which re-articulated the problems and needs of the construction sector. It is important to notice that each period is characterized by the co-existence of multiple and competing discourses. Each bracket is therefore not coherent in the sense that it represents a single hegemonic discourse. What we rather suggest is that the different discourses in each period are formed based on similar rules, and that archaeological isomorphisms (Foucault, 2006) between different elements in each period exist. Thus, even though conflicting discourses exist they are generated from an underlying set of constitutive distinctions offered by the same ideal (Andersen, 2003). The market ideal of the post-1990s has thus given rise to competing discourses concerning economic growth and social dumping due to the increased mobility of labour and capital. The discontinuities between the two periods in the analysis thus owe to the different ideals that form the basis for the socio-spatial orderings, or spatializations (Foucault, 2003), of the sector.

The second methodological remark concerns our focus on the part of the regulation that explicitly addresses the construction-housing sector. This delimitation has been made for a number of reasons, most notably that this sector has been subject to active framing activities

designed to ensure coordinated industrial change since the 1940s. The construction industry is made up of different sub-sectors each with their distinct characteristics. We do not assume that the analysis provided in this paper is representative of all these sub-sectors, or that the sector is a monolithic entity. Rather, in the analysis, we take the nuances serious and one of the purposes is to show how the very notion of what constitutes a sector or an industry in itself is a political and contested process that changes over time. Thus, when we leave out the period from the late 1960s to the late 1980s the reason is that the housing-construction subsector was not actively framed as an object of development in these years (cf. Jensen *et al.*, 2011). This does not mean that nothing of relevance for the analysis happened. Indeed, the very problematization of the industrial reforms in the 1990s operated on basis of a perceived need to end the industrial deadlock caused by exogenous factors in the form of economic recessions and endogenous factors in the form of technological and legislative lock-ins.

Changing construction governmentalities

The analysis illustrates main dimensions of (de-)regulation in the Danish construction sector. The analysis is structured in two main parts that each describe a specific Danish construction governmentality: The 1940-60s disciplinary power leading to a striation of socio-spatial relationships, and the 1990s-present neoliberal governmentality leading to a deregulation of the construction industry.

Discipline, centralization and the rationalization of construction (1940-60s)

Field of visibility: The birth of the sector

From the 1940s, a disciplinary governmentality emerged as the basis for the governance of Danish construction. This was a response to the industrialization of the Danish society and the emergence of the 'working class' as a new societal force that could potentially threaten societal stability. In order to ensure stability it was imperative that workers were not persuaded by the socialist and fascists ideals of radical societal reconfiguration. In particular, the quality of built environment was a key concern for winning over the workers in favour of a social-capitalist societal order. Under the new governmentality, construction was framed as a sector – as an instrument for societal modernization. The concept of a sector implied a new understanding of the relationship between the state and the social and economic activities. Unlike earlier attempts to further the productivity of the Danish industries, which had been rather fragmented and confirmed to particular groups and institutions, the immediate post-war efforts to problematize rationalization took on a much broader political and general economic scope. The Social Democratic post-war programme 'Denmark of the Future' thus highlighted two major problems that threatened the entire population, being the recurrent economic crises and the lack of efficiency in production. The latter was tied to the particular economic conditions during the war, as well as to a lack of planning and cooperation in business and industry. The 'sectoralization' entailed that construction in 1947 was institutionalized as (i) a discrete object of national regulation anchored in a housing ministry; and (ii) a discrete object of scientific knowledge production anchored in a national building research institute.

Technical aspects: Non-traditional and prescriptive norms

The most fundamental aspect of this sectoral reorganization involved the introduction of the notion of non-traditional building principles that permeated all aspects of the newly established sector. The conception was that the existing organization principles of construction activities based on traditions, guilds and tacit knowledge were irrational and anachronistic. Such a system could not be optimized sufficiently to deal with the perceived problems, and a very different organizational configuration was hence developed over the next decades, partly financed by the European Recovery Program. Metaphorically speaking, the machine was the ideal towards which the collective efforts were directed. The focus was not on producing buildings off-site, but on applying modern industrial principles on-site to create well-ordered spaces that could be optimized. In short, the practice of building was subjected to a process of stratification by functional differentiation that permeated the temporal, spatial and managerial properties of the building process as witnessed by technical, organizational and regulatory documents of this period.

New 'rational' building materials and techniques were introduced, and the traditional use of timber and bricks was partly replaced by pre-manufactured reinforced concrete elements, allowing the production move away from the chaotic construction site and into more controlled factory settings. A uniform building technique was envisioned to enable a high internal efficiency in the sector, thus giving rise to productivity growths. The focus on the internal efficiency of the sector is evident in a report from 1969 commissioned by the Ministry of Housing. The report suggested putting a stop to using construction to regulate the economic situation, as it would compromise the efforts to develop the sector's long-term productivity. Exact sciences also made its way into construction. With the establishment of a national building research institute, instructions relating to the 'mathematically most optimal solutions' and procedures found its way into the material as well as the organizational practice of construction. Most prominently, measuring and measurement methods became increasingly more important, and were perceived as necessities in order to counter the problems caused by use of new types of materials. Further, planning, which was permeated by scientific and calculative procedures and tools became increasingly important and was seen as the basis for all rationalization. In particular, the introduction of the phase-model with inspiration from modern project management principles was as a cornerstone in the strategic codification of the rationalization efforts in the 1960s. The phase-model involved a coordination based on contractually defined relations to ensure correspondence between plan and action (Gottlieb and Jensen, 2012).

Forms of knowledge: Scientific knowledge and material law

The rationalization of construction, however, also required a new regulatory regime to enforce the new rules and norms of operation. The modernization of the national building legislation was pertinent, as the existing formal legal rationality was seen as weak and irrational as it rested on obsolete Danish traditions that were incompatible with the rationalized building systems. The modernization efforts took form of a 'materialization' of the regulatory complex. Material law is designed to produce social effects (Teubner, 1983). It is purpose-oriented, legitimizes itself by the results it achieves through regulation (Gilson, 2012), and "demonstrates 'system

rationality' by the contributions it offers to political intervention by the welfare-regulatory state" (Teubner, 1983: 254). Material law is, as such, prescriptive.

These features were evident in the policymaking and regulation efforts of the 1940-1960s, where the Danish government preferred a rational comprehensive regulatory approach to policymaking (Rasmussen *et al.*, 2017) as evidenced by some of the central regulations of that period. April 30th 1946, law no. 235 concerning building with public subsidy was released stipulating demands in accordance with which public subsidy for building could be given. While not giving any direct recommendations and demands in relation to specific procurement methods or technical production methods, this law nevertheless paved the road for the following year's law no. 117 of April 26th 1947 on prefabricated housing, which gave preferential treatment to the financing of buildings erected with special building methods. In 1958, the Danish Standard on 'Modular Agreement for the Building Industry' was released. This determined the principles for the establishment of a national system for the coordination of measurements in buildings and building elements. The companies and professional actors drove this development; nevertheless, it captured the essence of the purpose-orientation and the legitimization of policies by results as it acknowledged that the agreement would place constraints on the absolute freedom of choice, but that this would be of subordinate concern compared to the technical, financial and social benefits it would attain instead.

The prescriptive character, on the other hand, is evident when observing the development of the national building code. Prior to 1960, the various local building legislations were legal codifications of established best practices and local building customs. With the first national building code from 1961, a harmonized prescriptive approach was instigated in order to develop a national market for standardized products. The prescriptive building codes were institutionally supported by a series of norms, standards, industry codes and guidelines, accreditation schemes, etc. in a 'governance ecology' of hard law and soft law, co-regulation, and legally enforced self-regulation, which we argue supported the political ambition of modernizing the Danish society.

Formation of identities: Normalized subjects

The development in the 1940-1960s had not only economic and technical impact on housing construction. Major organizational changes took place, including changes in the piece rate system, introduction of new contracting forms, and major reconfigurations in the roles and responsibilities of the different professional actors. With the increasing reification of scientific and rational production methods, the planning engineer emerged as the knowledgeable actor with the capacity to coordinate the different actors and technical areas of the building process (Jensen *et al.*, 2011). These developments and the increased complexity of the building process also transformed the relationship between the client and consultants. Thus, the 1968 departmental fixed price/time note (dictating that all public building projects had to be completed within the frame of a fixed agreed time – to a fixed agreed price) prompted the engineers and architects' association to develop a set of general conditions for consulting services. This limited the consultant's responsibilities and turned possible actionable acts into client-risks. The consultant thus turned from client representative, or 'shop steward', to contractual party.

Engineers were not the only professions reshaped in the image of the new governmentality. Where the planning engineer rose to prominence, the craftsmen lost their position, as the role of tacit and embodied knowledge diminished in favour of scientific knowledge, and the separation of planning/design and production. Moreover, this development was juridico-discursively (Foucault, 1990) underpinned. The 1947 law on prefabricated housing was followed in 1953 by a departmental note on 'non-traditional building' known as the mason-circular. This note created a sharp divide between skilled and unskilled labour by stipulating that a maximum of 15 percent of the skilled labour (masons) normally used in housing projects, could be used in non-traditional projects. This was followed by a further departmental note in 1960 (the assembly-circular) channelling public subsidy into non-traditional building. The 1950s also gave rise to new architectural forms, and while the architectural profession played an active role in this process, concerns were also voiced over the development, which in many ways had increased the distance between engineers and architects to the harm of the product and the user.

This entire sectoral reconfiguration left little room for the traditional skilled craftsman, and within the new governmentality the knowledgeable artisan was replaced by 'the assemblage worker' disciplined through pervasive surveillance techniques. Not only were the craftsmen due to technical developments unable to rely on their practical experience, they were also deprived their traditional legitimate role in the construction sector through regulatory measures.

Neoliberalism, market developments and deregulation (1990s - present)

Field of visibility: The marketization of construction

With the ratification of the Maastricht Treaty and the opening of the Eastern European markets, the early 1990s saw the emergence of new field of visibility for Danish construction. In contrast to the national modernization efforts of the post-war period, the new visibility framed the sector as an industrial cluster challenged by the imperative of promoting market efficiency and values. The political rationality contained herein sought to (i) improve the productivity of the sector; and (ii) position construction as a cornerstone in the general enterprise political reorientation towards an expansive economy fuelled by international competitiveness.

The *raison d'être* of the efforts to bring construction back on the development agenda was rooted in a perceived economico-structural problematization. The main argument shared by both government and businesses was that the sector experienced a lock-in situation due to market failures, which the incumbent actors were unable to address on their own. A concerted enterprise policy for the construction sector therefore had to be formulated. The policy was based on a perceived need for public intervention to force the necessary changes through. However, unlike the 1960s, where sector endogenous innovations were in focus, the re-oriented development efforts had a strong external, market-oriented focus. The idea was to instigate a market development and capacity building – most notably in the form of equipping companies with the required competences to compete in the open market and enter into new modes of collaboration.

Technical aspects: Technologies of performance and agency

The developments in the early 1990s marked a turn towards a new governmentality that is evident when looking into the technical aspects of the actualized construction political strategy. First, industrial economics and productivity analyses were introduced as techniques to produce knowledge on construction, and for articulating the sector as a market in guise of a 'resource area'. The notion of resource areas was launched in the early 1990s by the Ministry of Business Affairs as a new statistical representation of a constellation of hitherto independent statistical industrial activities. The idea was that resource areas would enable a more efficient enterprise policy, as they in contrast to the traditional statistical NACE code representations, constituted unambiguous market-specific entities that better reflected the re-orientation of the political aspirations. Second, in addition to this so-called 'liberal solution' that was believed to stimulate an economico-structural rationalization of the construction industry and lead to an increased internationalization; another instrument was capacity building in the form of a joint development program that would put innovation, capacity building and competences high on the agenda.

The development programme was rendered possible through the deployment of technologies of performance and agency (Dean, 2010), which can be seen as strategies geared at the production of the calculating individual that the advanced liberal governmentality presuppose. Technologies of agency, which include quasi-contracts, partnerships and instruments of voice and representation, can be seen as top-down instruments that aim at establishing subjects with the capacity to manage themselves. Thus, two of the most prominent outcomes of the joint development programme were the 'Project Productivity' and 'Project New Forms of Collaboration' initiatives that were instrumental in the development of relational contracting in Denmark, including partnering and various types of partnerships. We argue that this is a highly representative example of an advanced liberal government technology. In contrast to the forms of contractually defined relations involving high degrees of surveillance that was introduced in the 1960s, partnering represented a less formalized and rigid mode of collaboration, or a deliberative space, which established individuals and companies as responsible for their own conduct, and the realization of the object of governance in general.

Concurrently, another development took place in response to a perceived state failure. Despite 10 years of heavy public investments in the construction industry, in 2000 a construction task force report problematized the lack of development, and argued for a re-orientation of the political efforts. This reorientation came the following year with the election of a liberal-conservative cabinet government leading to the abolishment of the Ministry of Housing. The following years also saw the repeal of several councils, funds and support schemes within the construction and housing area. This was part of a large reconstruction of a series of quasi-governmental councils and committees in the industry. Moreover, the task force report led to the establishment a benchmark centre for the Danish construction industry that had the relationship between the market and the consumer in focus. Instead of a belief in an omniscient state with the foresight and ability to expediently provide the diagnosis and means necessary to solve a societal need, the centre was moulded in the neoliberal view that the market; the voluntary exchanges between consumers and producers would be sufficient in ensuring the right solutions.

This shift towards increased liberalization and market-orientation is also evident when viewing the Danish development in a European context. In contrast to the national standardization focus of the 1960s, the 1990s saw the rise of increasing international standardization efforts. In 1993, Denmark ratified the Maastricht Treaty with the ambition that the internal market of the European Union would create an export opportunity for Danish construction product manufacturers. By 2000 it was, however, also realized that the internal market did not have the intended effects, as local standards inhibited the use of construction products and materials between the different countries. Consequently, the Danish government engaged in the development of European standards for construction products with the aim of instigating a European harmonization in order to increase the international competition. A harmonized market for construction products was moreover seen as a means of reducing costs and promoting innovation in the Danish industry through the creation of framework conditions that would enable companies to create their own economic success.

Forms of knowledge: New contractualism and reflexive law

The increasing market-orientation developed hand-in-hand with a turn from substantive or material regulation towards more reflexive regulation. According to Teubner (1983: 255), reflexive law “shares with substantive law the notion that focused intervention in social processes is within the domain of law, but it retreats from taking full responsibility for substantive outcomes”. In this perspective, law becomes a system for the coordination of action within and between semi-autonomous social subsystems rather than a purposive programme of action, which instrumentally modifies patterns and structures of behaviour (Teubner, 1983). Moreover, Teubner (2007) argues that the outcome of the turn to reflexive law is that the contract evolve into an inter-system structural coupling mechanism. In essence, we argue that this was the legal rationality, which underpinned the legislative and wider regulatory complex of the construction industry from the 1990s onwards.

The various quasi-contracts, partnerships, and new collaboration forms that emerged in 1990s onwards reflect this rationality and the ‘new contractualism’, which formed the basis for the regulation of relationships between the industry’s actors. Gottlieb and Haugbølle (2013) illustrate how partnering in construction functions as an inter-systemic tension, and when observing government policies, industry guidelines and standards on partnering and partnerships in general, it is evident to see how these are associated with a collapse of preconditions of more traditional contract forms. These thus articulated the need for making adjustments and exemptions to the traditional institutionalized contract forms with the stated purpose of avoiding many of the inexpediciencies associated with traditional contract forms, and making room for innovation and value creation for the client and society.

The new contract forms that emerged favoured a procedural orientation that was also characteristic of the legislative system with respect to the regulation of construction products. Thus, with the accelerating development of new products and materials, it was increasingly difficult to maintain a prescriptive building code that encompassed every possible solution, and hence did not discriminate products or function as a trade barrier. Discussions about a transition to a performance-based building regulation had taken place throughout the late 1990s and 2000s, and performance requirements for fire-safety were introduced as early as in 2004.

However, it was only in 2017 that performance criteria, which reflected the new legal rationality, became a basis for the entire building regulation.

This development was driven by two trends in particular as addressed in the previous section: (i) the internationalization and increased harmonization; and (ii) the deregulation and creation of liberal framework conditions, e.g. through the marketization of functions that hitherto had been public affairs. The argument we put forward here is that this recent type of regulation differed drastically from the collective regulation of economic and social activity that characterized the post-WW2 period. Instead of substantive regulation, the political efforts were directed towards establishing conditions for self-regulation in an open market, as well as relationally oriented institutional structures and decision processes to assess competition issues, monitor the market, and enforce competition rules and stimulate innovation (cf. Haugbølle *et al.*, 2015).

Formation of identities: Calculating and empowered subjects

In essence, the political development in from the 1990s can be seen as a deregulation of substantive law, as well as the forms of subjectivity it implies. We suggest that the development also had a profound impact on the formation of identities in the sense of how actors were expected to engage in industry practice and regulation. The reason for this is that such type of performance-based regulatory regimes require accountability – and hence responsible, calculative subjects. As substantive and prescriptive legislation has been abandoned, *ex post* control, rather than *ex ante* prescription, have become important means for legislatures (cf. Bertelli, 2006) to monitor if companies follow the formal procedures, and act in accordance with the intentions of the law. This rationality was noticeable in a series of interrelated developments in the Danish industry.

An example is the so-called BygLOK initiative (Leadership, Organization and Competence in Construction) that was established in the early 2000s. The programme saw norms and traditions as a challenge to industrial development and sought to empower employees to take ownership for the industrial development agenda by means of technologies of performance in order to nurture ownership and responsible individuals. More recently, as a part of the anticipated transition to a performance-based building regulation in 2017, the Danish parliament debated a bill to substitute the mandatory public processing of applications for building permits with a market-based certification scheme. This will hold the industry's professional actors responsible for documenting that the products and technical solutions used in building projects fulfil the wider societal objectives and qualitatively defined requirements in the building code. Thus, rather than prescribing which solutions to use, regulators will in the future *ex post* monitor the adherence to performance goals. In addition, a recent verdict from the Danish Building and Construction Arbitration Board highlights the implications of the change from a substantive to a reflexive legal rationality. The verdict concerned the use of magnesium oxide (MgO) based façade panels that were unfit for use in the building envelope where they otherwise had been used extensively for years, despite existing industry guidelines warning about potential problems. The Arbitration Board found that the defendant, a technical consultant, did not disregard 'good consulting practice' by failing to initiate a technical analysis of the usability of the, at that time, untested plate. The court however ruled that the conduct on the part of defendant was actionable negligence as he failed to follow the legal obligation of submitting the

relevant information to the client, i.e. failing to adhere to the procedural norms that characterize the internal rationality of reflexive law (Teubner, 1983).

We see these as examples of the reticulation of the roles of the various actors implied in the new governmentality. The argument is that in order for subjects to be able to occupy the new deliberative space they have to be empowered subjects rather than normalized subjects, as was the governmental ideal in the 1940-1960s with its reliance on state coercion and prescriptive norms operationalized by standardized procedures. Table 2 summarizes main dimensions and differences of the two governmentalities.

Table 2. Governmentalities of Danish construction, 1940 to present day (based on Gottlieb and Jensen, 2016)

Governmentality	Discipline	Advanced liberal government
Emergence	1940-1960	1990-present
Objective of government	Governing the working class though national modernization	Increased competition, innovation, and internationalization
Fields of visibility	The sector as instrument for societal modernization	Market failure: <ul style="list-style-type: none"> - The sector as an inefficient economic entity State failure: <ul style="list-style-type: none"> - National regulation as barrier for innovation
Technical aspects	Techniques <ul style="list-style-type: none"> - Non-traditional construction principles - Measuring techniques Instruments and procedures: <ul style="list-style-type: none"> - Direct regulation - Phase-model, prescriptive norms, building codes, modular grids and planning techniques 	Techniques <ul style="list-style-type: none"> - Industrial economics - Productivity analyses Instruments and procedures: <ul style="list-style-type: none"> - Capacity building - Technologies of agency including life-long learning, relational contracting - Technologies of performance, including best practice, benchmarking, performance-based codes,

		voluntary standards and international harmonization
Forms of knowledge	Substantive legal rationality and material law Scientific knowledge, optimization, factory ideal	Procedural legal rationality and reflexive law New contractualism / contract forms
Formation of identities	Normalized subjects, planning engineers and unknowledgeable craftsmen	Empowered subjects and calculating individuals

On basis of the analysis, we now turn to a discussion of the consequences of the shift in governmentalities for the coordination of activities and actors in regulation of the sector.

Discussion and conclusion: Deregulation as socio-spatial transformation

The paper has adopted a governmentality perspective to analyse dimensions and consequences of the deregulation of construction sector policies and practices in Denmark. Previous research has often conceptualized deregulation and decentralization as a matter of the dismantling of the states' regulatory capacity, or the 'layering' of initiatives upon existing structures (Goldfinch and Wallis, 2010). Using the concept of governmentality, we have contributed to this discussion by conceptualizing the process of deregulation as a shift in governmentality.

Following Springer (2012), the transformative change implied in the shifting modes of regulation entails a socio-spatial transformation, which involves the opening of institutional spaces. Government can be seen as a socio-spatial practice, which defines the boundaries of action, rather than acting directly on people (Cornwall, 2004). Thus, returning to the issue of relocating the problem of the state in the problematic of governing (Popkewitz, 1996), in the first part of the analysis, we have illustrated how disciplinary power stratifies and distributes individuals in space (Foucault, 1991). We illustrated how material regulations, prescriptive norms, and centralized institutions produced a socio-spatial stratification that established a clear divide between governing (state) and governed (social actors) subjects. In contrast, the neoliberal governmentality deterritorializes and blurs boundaries of action by creating smooth space (Deleuze and Guattari, 2004). Quasi-contracts, reflexive regulations, individualizing technologies of performance and epistemic practices in the form of industrial economics, and new statistical representations are examples of this transformation in the 1990s that led to a shift in the "locus of the activity of 'regulating' from the state to other, multiple, locations" (Black, 2001: 112).

The decentring of regulation implies that (i) no single actor has all the knowledge required to solve complex social problems, nor the ability to employ the instruments needed to make regulation effective, (ii) no single actor can dominate the regulatory process; and (iii) interdependencies and interactions exist between government and social actors (Black, 2001). We suggest that the governmentality perspective can shed new insights into these issues with

respect to the specificities or actualizations of deregulation, and the process of orchestrating change and coordinating activities between constellations of actors and organizations.

On the issue of the specificities of deregulation, the governmentality perspective foregrounds the spatial properties of power. Although the paper deals with a Danish context, it is possible to generalize the findings to some extent. Harvey (2003) has e.g. demonstrated how the construction industry in the UK has undergone a development that in many ways resemble the one we have depicted here. Even though there are parallels to the development in other countries, the concept of governmentality highlights how the complex process of transformative change involves the opening and reconfiguration of existing institutional spaces. Spaces are infused with existing relations of power and interactions within them may come to reproduce these relations. Deregulation is therefore not a homogenous political project and result. Springer (2011) suggests that scholars should work towards conceiving a plurality of 'actually existing neoliberalisms' arising from mutable geo-historical processes. The governmentality perspective is a sensitizing device that can help us appreciate the specificities of the local appropriation of neoliberal ideas (Springer, 2011) and other societal rationalizations propagating on a global level. The consequence hereof is that the actualization of neoliberalism (and other political ideals) is a local achievement, and that the implementation of similar political instruments and social technologies may follow different trajectories and give rise to dissimilar results in different contexts.

Moreover, we have shed light on the contextual specificities of the mobilization and enactment of social technologies that support a given visibility or representation of the governance object. Thus, looking into the current actualization of the neoliberal governmentality in Danish construction, we see how the recent developments have led to a decoupling of construction regulation and practice that has established new 'mediating' or 'interstitial' institutions as coordinative devices between actions at the macro- and micro-institutional level. We use the term 'mediating' institution to refer to the various "relatively small communities [which] stand between the individual and the large megastructures of society" (Fort, 1999: 395). Mediating institutions socialize individuals and convey important moral norms that shape their self-interest in relation to the concerns of others. Interstitial institutions, on the other hand, are "institutions that are not part of the approved and acknowledged social milieu [...] and perform functions that are performed in no other way" (Van Roy, 1970: 89). Our argument is that mediating institutions is becoming increasingly important in conveying practical knowledge, professional guidance and institutional commitment in a situation, where the regulatory complex have become procedural and oriented towards supporting regulatory decision structures, instead of maintaining its instrumentality and purpose-orientation in terms of modifying market functions (Teubner, 1983). The consequence hereof is an increase in the gap between legislative rationales and sectoral interests, due to a lack of institutional commitment that legislatively sanctioned measures traditionally have been instrumental in achieving. Thus, instead of hard legislation, we suggest that the sector is in the midst of a transition towards increased reliance self- and quasi-regulatory measures (e.g. Black, 2001). As an example, the Permanent Construction Committee was established in 2016 as a forum for knowledge sharing between a group of organizations that had a declared interest in mitigating and rectifying problems with negative consequences for building owners, companies and the society. The committee was

formed in response to the critical magnesium oxide (MgO) case, which gave rise to an articulated need for a forum with the necessary expertise to relate to the uptake of new building materials in the industry. The committee, which is endorsed by the Danish Transport, Construction and Housing Authority, is an example of a mediating institution that plays a prominent role in setting targets for, and ensuring commitment to, a future development agenda through the setting of common (voluntary) standards, codes, and norms.

As such, the committee represents a specific institutional space for participation that provide private sector actors legitimacy, communicative influence and opportunities to deliberate and negotiate (Fung, 2006) sectorial governance issues. This participatory mode might be construed as a specific Danish appropriation of neoliberal ideas that has developed in conjunction with the Danish labour market model characterized by high degrees of trust and tradition for collective bargaining. Andersen *et al.* (2014) thus argue that the core of the Danish model is a system of institutionalized relations that has created trust and mechanisms for coordination between labour market parties and political authorities, and which has proved effective in solving problems via negotiation. Andersen *et al.* (2014) also suggest that tensions recently have developed in the model due to increased individualization and competition, which has reduced the unions' representation, and thus their bargaining power and capacity to ensure coordinated development.

Thus, on the issue of the orchestration of change and coordination of activities, the important question of how actors and organizations are able to influence and act as (co-)governors in particular spaces arises. If space is a social product that comes to be defined by those who are invited into them as well as those doing the inviting (Cornwall, 2004), issues of participation and representation become important. Fung (2006) argues that the authorized set of decision makers typically participating in many areas of contemporary governance is somehow deficient, as they may lack knowledge, resources, or respect to command compliance and cooperation. Another, more normative, explanation is that they represent and maintain dominant political ideals instead of contribute to the formulation of alternative and potentially prefigurative political projects (Springer, 2016).

We thus suggest that new interstitial institutions are likely to be in demand for in order to ensure that considerations to alternative agendas and objectives are met. Interstitial institutions operate outside the state, and are associated with the strategy of building institutions of social empowerment (Wright, 2010). In construction, we see this development slowly taking place in various areas. Hybrid organizations and horizontal relationships and networks have begun to emerge as regulatory spaces that play a role in enabling transformational change and supporting the development of a construction sector that can adapt to a variety of changing societal needs other than competition. The shift to a neoliberal governmentality has led to the decline of the enclosures or institutions (Hardt, 1995) of construction. As Hardt (1995) however also argues this type of smoothing of social space does not bring an end to social striation. On the contrary, elements of striation reappear and amplify. The traditional regulations and contracts in construction that upheld unequivocal roles, responsibilities, and duties have been partly replaced by flexible contracts and quasi-regulations that require increased organizational capacity to handle. This may create an increased inequality or divide between large companies

with the resources necessary to internalize the cost of the changes, and the small companies that make up the overriding majority of companies in the sector.

Our argument is that the strong procedural rationality and focus on market values constitutes a hegemony that has appropriated construction regulations and development initiatives, and led to the marginalization of alternative considerations and approaches that otherwise could span different and heterodox societal concerns. For new reform agendas to be considered, they need to have legitimacy necessary to rally support and mobilize stakeholders. In this context, interstitial institutions will have the capacity to function as important counterhegemonic institutions (Wright, 2010). This requires that we pay closer attention to the role of existing institutional arrangements in the structuring of social spaces. With its focus on how multiple social, political and technical concerns connect and evolve, the governmentality perspective can contribute to this ongoing project by providing critical perspectives on the socio-spatial transformation that can help transgress the bounds of neoliberalism in construction.

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